103 FERC ¶ 61,316

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Maritimes & Northeast Pipeline, L.L.C.	Docket Nos.	RP00-474-001
		RP00-474-002
		RP01-17-004
		RP01-17-005
		RP03-174-000

ORDER ON REHEARING AND COMPLIANCE FILINGS

(Issued June 9, 2003)

1. This order addresses the request for rehearing and clarification of Maritimes & Northeast Pipeline, L.L.C. (Maritimes) of the Commission's July 3, 2002 order [1] in this proceeding (the July 3 Order) which accepted, as modified, Maritimes' compliance filings to Order Nos. 637, 587-G, and 587-L, as well as Maritimes' August 2, 2002 revised tariff sheets filed to comply with the July 3 Order.[2] In addition, this order addresses Maritimes' December 2, 2002 filing in Docket No. RP03-174-000 that was required by the Commission's October 31, 2002 Order On Remand[3] (the Remand Order) in response to the decision by the United States Court of Appeals in Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002).(INGAA). As more fully explained below, the Commission conditionally accepts the tariff sheets as shown on the Appendix effective July 1, 2003. The Commission directs Maritimes to file revised tariff sheets within 15 days of the date of this order. This order is in the public interest because it implements compliance with the Commission's policies that encourage competitive conditions on the pipeline grid, creates greater flexibility for shippers, and enhances pipeline transportation services.

[1]Maritimes & Northeast Pipeline, L.L.C., 100 FERC ¶ 61,030 (2002).

[2]See Appendix A for the list of tariff sheets.

[3]101 FERC ¶ 61,127 (2002), reh'g pending.

Background

2. On August 15, 2000, in Docket No. RP00-474-000, Maritimes filed pro forma tariff sheets to comply with Order No. 637. On July 3, 2002, the Commission issued an order finding that Maritimes had generally complied with Order No. 637 and directed Maritimes to file revised tariff sheets within 30 days of the order. In summary, Maritimes was directed to: (1) incorporate the North American Energy Standards Board (NAESB) Standard 5.3.2 (Version 1.5) regarding scheduling equality; (2) remove language restricting segmentation rights; (3) revise the General Terms and Conditions (GT&C) to reflect a pro-rata curtailment of firm service; (4) modify the GT&C to implement the CIG/Granite State[4] discount policy; (5) revise Maritimes' proposed MNPAL Rate Schedule to conform with Commission policy; (6) revise the imbalance netting and trading tariff provisions; (7) revise the application and crediting of certain penalties; and (8) modify its proposed tariff language to retain existing curtailment and OFO penalty charges.

3. On August 2, 2002, Maritimes filed a timely Request for Clarification and Rehearing of the July 3 Order. Additionally, on August 2, 2002, in Docket Nos. RP00-474-002 and RP01-17-005, Maritimes submitted a filing to comply with the Commission's July 3 Order and requested implementation of the proposed tariff sheets on or after April 1, 2003. Subsequently, on December 2, 2002, Maritimes filed a request for an extension of the effective date to July 1, 2003 due to issues remaining unresolved in the instant filing at that time. According to Maritimes, the initial requested effective date of April 1, 2003, was contingent upon the timing of the Commission's issuance of the order on rehearing of the July 3 Order, as well as the timing of the Commission's order on remand in INGAA. Accordingly, Maritimes' best estimate effective date was July 1, 2003.

Public Notice, Interventions and Protests

4. Public notice of Maritimes' August 2, 2002 compliance filing was issued on August 12, 2002. Interventions and protests were due as provided in Section 154.210 of the Commission’s regulations (18 C.F.R. § 154.210 (2003)). Calpine Energy Services, L.P. (Calpine) filed a protest to the compliance filing. On September 5, 2002, Maritimes filed an Answer in response to Calpine's protest.[5] Calpine's protest and Maritimes' Answer are discussed below.

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[4]Colorado Interstate Gas Company, 95 FERC ¶ 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC ¶ 61, 273 (2001), reh'g denied, 98 FERC ¶ 61,019 (2002).

[5]Although Rule 213(a)(2) generally does not permit answers to protests, we will accept Maritimes' answer since it helps clarify the issues under consideration in this proceeding.

I. Rehearing of and Compliance with the July 3 Order

5. Maritimes was the only party filing for rehearing. Based on its review of Maritimes' August 2, 2002 compliance filing, the Commission finds that Maritimes has generally complied with the July 3 Order, with the exceptions of the issues discussed below. The tariff sheets are accepted effective July 1, 2003, subject to the conditions of this order. Maritimes is directed to file revised tariff sheets, within 15 days of the date of this order, to incorporate the revisions set forth below.

A. Scheduling Equality

6. The July 3 Order directed Maritimes to comply with NAESB Standard 5.3.2 (Version 1.5). Maritimes' August 2, 2002 compliance filing stated that this compliance obligation would be met when it filed to comply with Order No. 587-O.

7. On August 12, 2002 and October 15, 2002, Maritimes submitted, in Docket Nos. RP02-489-000 and RP02-489-001, tariff sheets to comply with Order No. 587-O. The tariff sheets, among other things, adopted NAESB Standard 5.3.2. The Commission, by orders issued September 27 2002 and February 6, 2003, accepted Maritimes' tariff sheets to comply with Order No. 587-O.[6] Accordingly, Maritimes tariff satisfactorily reflects the adoption of NAESB Standard 5.3.2 with regard to scheduling equality.

B. Segmentation

1. Background

8. The July 3 Order directed Maritimes to delete language limiting segmentation rights to a customer's contract path. The contract path is defined as the firm daily contract capacity rights from the Primary Point of Receipt to the Primary Point of Delivery. The July 3 Order found that limiting segmentation to the contract path is inconsistent with Order No. 637-A, which holds that a shipper has the right to segment outside its contract path if: (1) the segmentation requested is within the zone that it has contracted for, and (2) the combined nominations of the releasing and replacement shippers do not exceed the initial mainline contract demand in any one segment.

2. Compliance Filing

[6] 100 FERC ¶ 61,372 (2002), and 102 FERC ¶ 61,145 (2003).

9. In its compliance filing, Maritimes revised Section 6.7 of the GT&C to provide shippers with the option to segment outside the contract path. However, Maritimes also proposed in Section 6.1 that the outside-the-path delivery provisions be combined with a "lowest unutilized quantity" (LUQ) mechanism, under which outside-the-path transactions may not exceed the LUQ. The LUQ is equal to the difference between a shipper's mainline contract demand and the highest quantity of gas scheduled under a firm Rate Schedule 365, MN151, MN909, MNOP or MNLFT service agreement to be delivered within its contract path of such service agreement.

3. Protest to Compliance Filing and Answer

10. Calpine argues that Maritimes' proposed LUQ limitation violates Commission policy. Calpine states that the Commission has rejected the LUQ modification in other filings, citing Algonquin Gas Transmission Co., 98 FERC ¶ 61,211 (2002) and Texas Eastern Transmission Corp., 98 FERC ¶ 61,215 (2002). Calpine contends that Maritimes does not provide any operational justification for this proposed limitation, and urges the Commission to reject Maritimes' LUQ proposal. Maritimes filed an answer to Calpine's protest reiterating much of the same rationale for permitting the LUQ mechanism that it set forth in its request for rehearing, which is discussed below.

4. Request for Rehearing

11. Maritimes requests rehearing of the July 3 Order requiring segmentation outside the contract path. Maritimes argues that the Commission's ruling is directly contrary to the Order No. 637 requirement which limits segmentation to capacity for which a customer has contracted,[7] and the Commission's general "no MDTQ overlap" policy.[8] Additionally, Maritimes argues that INGAA makes clear that the Commission bears the burden in each individual compliance proceeding to justify overriding tariffs and service agreements. Further, Maritimes argues that it has not agreed to expand its customers' MDTQ rights, and can only be required to do so under NGA action under Section 5 of the Natural Gas Act (NGA). Accordingly, it requests that the compliance filing incorporating the LUQ mechanism be accepted.

5. Commission Decision

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[7] Citing, Order No. 637 at 31,303, and Order No. 637-A at 31,591-92 (Pipelines are not required to permit segmentation where the nominations by a shipper or a combination of releasing and replacement shippers exceed the contract demand of the underlying contract on any segment).

[8] Citing, e.g., Order No. 637-A at 31,591-92.

12. The Commission rejects the LUQ mechanism. In Texas Eastern Transmission LP, (Texas Eastern), 98 FERC ¶ 61,215 (2002), order on reh'g, 102 FERC ¶ 61,198 at 61,557-58 (2003), the Commission fully explained why the LUQ mechanism does not comply with the Commission policy that when segmentation is operationally feasible, pipelines must permit a shipper to engage in segmented transactions outside its contract path up to its full contract demand. The Texas Eastern orders found, among other things, the argument that shippers cannot segment outside their contract path ignored the receipt and delivery flexibility that pipelines were required to provide to its customers in Order No. 636. Maritimes' request for rehearing of the requirement that it permit segmentation outside the path does not set forth any additional arguments not considered by the Commission in Texas Eastern, as well as in a number of other orders.[9] Accordingly, Maritimes' request for rehearing is denied and its LUQ proposal is rejected.

C. Discount Provisions

1. Background

13. In Order No. 637-A, the Commission stated that the current policy permitting pipelines to limit discounts to particular points needs to be reexamined in the compliance filings, as part of the examination of restrictions on capacity release and segmentation.[10] In its filing, Maritimes did not propose any changes in its tariff regarding discount provisions.

14. In the July 3 Order, the Commission stated that it had adopted a new policy in Colorado Interstate Gas Company (CIG) and Granite State Gas Transmission Company (Granite State),[11] that permits a shipper to retain a discount when it moves to segmented points or secondary points through a streamlined request process in which the pipeline processes requests for discounts within 2 hours. The Commission explained that it had adopted that policy since its discount and segmentation policies can best be balanced by adoption of a policy under which a shipper with a discounted rate that seeks to use an alternate receipt or delivery point (whether through segmentation, capacity release, or its own exercise of flexible receipt and delivery point rights) can continue to receive a

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[9] See, TransColorado Gas Transmission Company, Docket No. RP00-459-002, issued concurrently with this order.

[10] Order No. 637-A at 31,595.

[11] Colorado Interstate Gas Company, 95 FERC ¶ 61,321 (2001); Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001), reh'g denied, 98 FERC ¶ 61, 019 (2002).

discounted rate if the pipeline has granted a discount to a similarly situated transaction at the alternate point.[12]

15. The Commission has also explained that under this policy, there is a rebuttable presumption that a shipper holding a discount at a point will retain a discounted rate if it chooses to segment, release capacity, or use its flexible receipt and delivery point rights to move gas to another point at which the pipeline has granted discounts for its firm or interruptible transportation services.[13] The pipeline can rebut this presumption by demonstrating that the segmented or secondary point transaction is not similarly situated to the transactions receiving the discount at the secondary point.

16. The July 3 Order directed Maritimes to file actual tariff sheets implementing the rebuttable presumption policy discussed in the order along with a procedure for processing requests to retain discounts at each scheduling opportunity provided by the pipeline.

2. Compliance Filing

17. Maritimes incorporated the CIG/Granite State discount policy in Section 27 of the GT&C.[14] Proposed Section 27.2 states as follows:

> If Pipeline has agreed to a discount with a Customer receiving service under a Service Agreement pursuant to Part 284 of the Commission's Regulations and the discount is limited to specific Point(s) of Receipt or Delivery or both, the Customer may request that such discount apply to service under such Service Agreement at a different Point of Receipt or Delivery accessible under said Service Agreement at which Pipeline and the Customer have not specifically agreed to the discounted rate. There is a rebuttable presumption that such discount shall apply at the requested point if Pipeline, at the time of the request, is granting discounts to other similarly situated Customer(s) receiving service at that point. However, Pipeline can rebut this presumption by demonstrating that the proposed service to the Customer is

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[12] See Paiute Pipeline Company, 96 FERC ¶ 61,167, at 61,750 (2001) (explaining that the CIG discount policy applies to the use of secondary points whether through capacity release transactions, segmentation, or the use of flexible receipt or delivery points).

[13] The shipper seeking to move its point will pay the higher of its contractual rate or the discount rate being offered at the alternate point. See CIG, 95 FERC ¶ 61,321, at 62,121 n.38.

[14] See, First Revised Sheet No. 305.

> not similarly situated to the service receiving a discount at the requested point. Regardless of the discount granted by Pipeline to any similarly situated Customer at such requested point, if Customer is granted a discount for service at the requested point pursuant to this Section 27.2, Customer shall pay the higher of its contractual discount rate or the discount rate provided to another Customer utilizing the requested point. Pipeline shall have no obligation to provide Customer with a discount at a requested point, as contemplated under this Section 27.2, if Customer has requested to allocate all or a portion of its MDDO or MDRO, as applicable, from the specific point to which Customer's original discount applied to the requested point.

18. In addition, Maritimes stated that consistent with the Commission's ruling in National Fuel,[15] the tariff sheets implementing the two-hour response time requirement provide that (i) requests for retained discounts must be made on a business day, (ii) Maritimes will respond to requests received between 6:30 A.M. CCT and 4:00 P.M. CCT within two hours from the time the request is received, and (iii) Maritimes will respond to any requests received after 4:00 P.M. CCT by 8:30 A.M. CCT on the following business day.

3. Request for Rehearing

19. In its rehearing request, Maritimes asserts the Commission has erroneously applied the CIG/Granite State discount policy to Maritimes without first showing how Maritimes' tariff provisions are unjust and unreasonable. Maritimes states that the Commission has not explained why Maritimes' existing discount policies or provisions designed to provide market-responsive selective discounts are lacking. Maritimes maintains that the Commission must make this showing either to Maritimes individually, or on an industry-wide basis under NGA Section 5. Maritimes requests clarification that the Commission has not changed the terms of any existing agreements through its application of the CIG/Granite State policy by stating that existing discount agreements that limit discount to a single point(s) will remain limited to that point specified in the agreement.

20. Maritimes argues that the Commission's discount policy was not part of the Order No. 637 rulemaking, and that the Commission imposed this new policy on Maritimes despite Maritimes' evidence and explanation made in compliance with Order No. 637. Maritimes states that in fact the Commission denied that Order No. 637 changed current law or policy on discounts, or that Order No. 637 required tariff changes to implement new discounting requirements. Further, Maritimes avers this policy was not developed based on

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[15] 98 FERC ¶ 61,123, at 61,368-69 (2002).

an individual, contested, Order No. 637 compliance case. Maritimes argues that the Commission's radical and unsupported change in the discount policy is contrary to a long line of D.C. Circuit court rulings that held that agencies may not make such radical changes without careful explanation, and that parties are entitled to rely on consistent application of administrative rules. Maritimes avers that this discount policy would constitute impermissible retroactive ratemaking, imposing new obligations on discounts that Maritimes has already granted. Maritimes seeks clarification that this policy will thus only be applied prospectively.

21. Finally, Maritimes states that if the Commission adheres to the CIG policy, the Commission has allowed that pipelines may take longer to process discount requests under the CIG policy pursuant to National Fuel. Maritimes requests this same allowance be afforded to Maritimes due to Maritimes' operational restrictions on processing discount requests outside of normal business hours. Specifically, Maritimes requests that it be permitted until 8:30 a.m. Central Time on the next business day to process segmented capacity discount requests received after 4:00 p.m. Central Time, and the shipper requesting retention of its discount on a non-business day, such as weekends and observed holidays, must submit its request by 4:00 p.m. Central Time on the business day prior to the non-business day.

4. Commission Decision

22. We will deny rehearing as to the application of the CIG/Granite State discount policy to Maritimes. There is no merit in Maritimes' argument that in adopting its discount policy, the Commission erred by departing from existing policy and precedent without providing a reasoned explanation.[16] In Order No. 637-A, the Commission found that the interaction of its segmentation policies and its current policy of permitting pipelines to limit discounts to particular points needed to be re-examined. The Commission determined that placing restrictions on discounted transactions could interfere with competition created through released capacity.[17]

23. In Colorado Interstate Gas Company,[18] the Commission examined the effects of its existing discount policy on competition and found that if shippers with a discount would

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[16] We see no need to respond to Maritimes' request that we reiterate that the 2 hour rule is not applicable after normal business hours or on weekends since the July 3 Order clearly stated that, 100 FERC at 61,087 n. 26.

[17] Order No. 637-A at 61,595.

[18] Colorado Interstate Gas Co., 95 FERC ¶ 61,321 at 62,120-21 (2001).

lose the discount and be subject to the maximum rate if such shippers utilized their flexible point rights to move to a secondary point or segmented capacity which would use different points than the primary points contained in the contract, this would have the effect of restricting competition. The Commission, however, also recognized that if the discount were to be automatically applied at secondary points, discounts may be given for other than competitive reasons contrary to the discount policy. Therefore, the Commission found that these interests could best be balanced by permitting the shipper to retain its discount when moving to secondary or segmented points, if the pipeline has granted a discount to a similarly situated shipper at the alternate point. This allows a shipper to better compete with primary capacity offered by the pipeline and with other shippers at the alternate points. This policy was an application of the general requirement that pipelines must not engage in undue discrimination by ensuring that a shipper with a discounted contract can continue to receive a discount at points where it is similarly situated to other shippers receiving a discount. Therefore, the Commission has found pursuant to NGA Section 5 that allowing discounts to be limited to specific points is unjust and unreasonable because it reduces competition, and is unduly discriminatory insofar as it treated similarly situated shippers at the same point differently.[19]

24. Maritimes has not shown or even suggested why the policy should not be applied to it. The Commission's policy applies prospectively to shippers under existing discount agreements when those shippers seek to use secondary points. Accordingly, provisions in Maritimes' tariff or in its contracts that are inconsistent with the Commission's CIG/Granite State policy are unjust and unreasonable, and unduly discriminatory, and Maritimes must modify its tariff consistent with the CIG/Granite State policy in order to assure that it follows just and reasonable and not unduly discriminatory discounting practices.

25. Additionally, the last sentence of proposed Section 27.2 states that "Pipeline shall have no obligation to provide Customer with a discount at a requested point, as contemplated under this Section 27.2, if Customer has requested to allocate all or a portion of its MDDO or MDRO, as applicable, from the specific point to which Customer's original discount applied to the requested point." It is not entirely clear what Maritimes intends by this proviso, but it appears to mean that if the shipper changes all or any portion of its primary point capacity to another point, it will not be entitled to any discount at the new point.

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[19] See, Williston Basin Interstate Pipeline Co., 99 FERC ¶ 61,327 (2002); Texas Eastern Transmission, LP, 102 FERC ¶ 61,198 (2003); and Natural Gas Pipeline Company of America, 103 FERC ¶ 61,174 (2003).

26. The Commission does not require pipelines to discount their rates. However, the Commission does require that to the extent the pipeline sells primary capacity at a point to some shippers at a discount, it must offer such discounts to other similarly situated shippers seeking to use the same point as a primary point. This is consistent with the requirement in NGA Sections 4 and 5 that pipelines must not engage in undue discrimination among shippers. This does not require the pipeline to include in its tariff a provision that, if it has sold primary capacity at a point to one shipper, then other shippers seeking to obtain primary point capacity at that point are presumed to be similarly situated. Nor do the accelerated processing requirement of the CIG/Granite State discount policy on requests to retain discounts when changing to a new primary point. Those aspects of the CIG/Granite State discount policy only apply to requests by shippers to retain a discount when shifting to a secondary point. Thus, to the extent a pipeline sells primary point capacity at a discount, it must do so in a not unduly discriminatory manner, and to the extent a pipeline has sold primary capacity at a point to some shippers at a discount, it must offer such discounts to other similarly situated shippers.[20] Therefore, if the proviso means that if a shipper seeks to change its primary point, it must pay the maximum rate at that point, Maritimes must remove this restriction, but if Maritimes intends some other meaning, it must explain what it is, and how it conforms with Commission policy.

D. Imbalance Netting and Trading

1. Loss of Transportation Revenue

a. Background

27. In Order No. 587, the Commission stated that the pipeline must demonstrate a loss in transportation revenue due to netting and trading and if such a demonstration is made, the Commission would permit pipelines to collect for lost transportation revenue. The July 3 Order determined that it was not clear how cash-out volumes, as well as trading imbalances between parties, could create a transportation volume that had not already been charged the transportation tariff rate. The order also found that it was unclear, since Maritimes bills on delivered volumes, why Maritimes needs language in GT&C Section 11.6(a) of its cash-out provisions to bill for additional volumes. The July 3 Order directed Maritimes to either remove the language allowing for recovery of lost transportation revenue, or explain: (1) whether it actually bills its rates on total deliveries as set forth under its rate schedules; (2) whether the transportation charge assessed under its cash-out procedures is in addition to

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[20] See ANR Pipeline Company, 103 FERC ¶ 61,022 at 61,084 PP 28-29 (2003).

the transportation charge permitted for total deliveries under Maritimes' rate schedules; (3) if the cash-out language is specific to delivery points covered by OBAs.

b. Compliance Filing

28. Maritimes states that it will experience a loss of revenue under certain imbalance trades if a transportation charge is not imposed. According to Maritimes, trades are allowed between rate schedules and a loss of revenue will occur when different transportation rates are involved. Maritimes provided the following illustrative example to explain when it will experience a loss of transportation revenue in the context of imbalance trading:

> Assume Shipper A schedules 10,000 dekatherms ("Dth") under MN365, a firm 365-day rate schedule, but actually takes 11,000 Dth at its delivery point. Shipper A pays a commodity rate of $0.0000[[21]] on the 11,000 Dth actually delivered and 1,000 Dth is "due pipe." Shipper B schedules 10,000[[22]] Dth under MNIT, an interruptible rate schedule, but actually takes 9,000 Dth at its delivery point. Shipper B pays a commodity rate of $0.7150 on the 9,000 Dth actually delivered and has an imbalance of 1,000 Dth "due shipper." Shipper A and B conduct a trade of their respective imbalances. Unless Maritimes is allowed to charge Shipper B for the difference in rates, Maritimes will suffer a loss of revenue equal to 1,000 Dth multiplied by the difference between $0.7150 and $0.0000 or $715.00.

Maritimes further states that it is obvious from the above example that new forms of gaming will result if Maritimes is not allowed to collect the rate differential. Without the assessment of a transportation charge on certain imbalance trades, Maritimes contends that it would suffer a loss of transportation revenue.

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[21] As set forth on First Revised Sheet No. 7, the usage rate under the MN365 Rate Schedule is $0.0000 when transportation is within the scheduling tolerance. The usage charge is $0.7150 when transportation is outside the scheduling tolerance. Since Shipper A's delivery did not exceed 110% of scheduled service, the transportation takes place within the tolerance (See, First Revised Sheet No. 103).

[22] While the example does not specifically state that Shipper B tenders 10,000 Dth, it is assumed Shipper B schedules 10,000 Dth and Maritimes receives 10,000 Dth. Additionally, since Shipper B took at least 90% of scheduled service, there is no additional charge for transportation outside the tolerance (See, First Revised Sheet No. 128).

29. Maritimes also claims that it is adhering to the terms of its tariff by imposing a transportation charge on certain imbalances as part of the cashout calculation. Maritimes states that the Commission's July 3 Order appears to assume that Maritimes would have already billed its transportation customers for transportation charges on the entire quantity delivered at the delivery point. According to Maritimes, this assumption is incorrect when Operational Balancing Agreements (OBA) are in effect since a shipper's actual deliveries at a point are deemed to be equal to its scheduled quantities. Maritimes states that under its existing rate schedules the tariff provides that it will base the customer's invoice on the quantity of gas delivered in the month under the applicable rate schedule. Maritimes states that it calculates the transportation charges based on the total quantities allocated to the contracts under each transportation rate schedule. Further, the transportation charges are not provided for in the OBA agreements, which means that transportation charges are not assessed on delivered quantities in excess of those allocated to an OBA.

30. According to Maritimes, Section 11.6(a) of the GT&C provides that "[t]he payment of cash out charges relating to excess deliveries shall be made in addition to the payment of transportation charges applicable to such excess deliveries. Maritimes states that this results in a transportation component being charged to all cashout parties with a net "due pipeline" balance. According to Maritimes, the charge is applicable to transportation agreements and OBAs that provide that end-of-month imbalances are resolved via the cashout mechanism. The intent, of which, is to simply collect the applicable commodity rate for all quantities transported by Maritimes. Maritimes provides the following example to demonstrate the loss of transportation revenue:

> Assume Shipper A nominates a delivery of 10,000 Dth at its citygate delivery point, and is the only party delivering gas to that point. The actual quantity delivered at the point is 11,000 Dth. The delivery point is covered by an OBA (held by Party B) that provides that any contract balances will be resolved monthly via the cashout mechanism. The quantity allocated to Shipper A is 10,000 Dth - this is the quantity upon which Shipper A's transportation invoice is based. The additional flow of 1,000 Dth is allocated to Party B, and the resulting imbalance on Party B's OBA is resolved pursuant to Section 11.6 of the General Terms and Conditions of Maritimes' tariff.

Maritimes states that without the application of Section 11.6, it would never receive the transportation revenue for the 1,000 Dth applied to Party B's OBA and that it is simply collecting the applicable transportation charges for all quantities transported on its system.

31. Lastly, Maritimes provided the following clarifications with respect to whether it actually bills its rates on total deliveries. First, Maritimes clarifies that it does base each customer's invoice on the allocated quantity of gas delivered in the month for the

customer's account under the applicable rate schedule. Second, the transportation charge assessed under its Section 11.6 cash-out procedures is not in addition to the transportation charge permitted for total deliveries under Maritimes' rate schedule, rather it would apply only in the OBA-related example described in detail above.

c. Request for Rehearing

32. Maritimes requests rehearing of the July 3 Order arguing that the proposed transportation charge on certain imbalance trading transactions was included to keep Maritimes whole for any loss of transportation revenues that it would otherwise collect, and in no way attempts to charge a fee for trading imbalances on its system. Maritimes' request for rehearing incorporates the examples and arguments set forth in its compliance filing.

d. Commission Decision

33. The Commission will permit Maritimes to assess a transportation charge for imbalance trades under the circumstance detailed above for transactions under an OBA, or when the delivery point is covered by an OBA party. The charging of a transportation charge under the OBA scenario discussed above is consistent with the Commission's action in Midwestern Gas Transmission Co., 101 FERC ¶ 61,310 (2002), and East Tennessee Natural Gas Company, Docket No. RP00-469-000, 103 FERC ¶ 61,237 (2003). Maritimes' tariff, however, does not specify what transportation charge will be assessed when a trade takes place under an OBA. Maritimes is directed to file revised tariff language, along with a detailed explanation and examples, to expressly state what transportation charge will be assessed for imbalances under an OBA. Further, Maritimes' OBA example above does not fully address the reimbursement by the pipeline to the shipper should an overpayment result from a netting and trading transaction. This could occur where an OBA receipt point operator trades an underage below scheduled receipts to a delivery point OBA operator with an underage below scheduled deliveries. Accordingly, Maritimes must include tariff language that provides for crediting or refunding revenue as the result of netting and trading transactions which result in an overpayment to Maritimes.

34. With respect to Maritimes' example where the trading of imbalances takes place between shippers not covered by an OBA, the Commission rejects Maritimes' proposal to charge an additional transportation charge. As stated above, Maritimes pursuant to the July 3 Order, clarified that it bills shippers on quantities of gas delivered. Maritimes' tariff contains one operational impact area and does not have more than one transportation rate zone. Netting and trading of imbalances may occur between shippers under the same rate schedule (e.g., IT to IT) or under different rate schedules (e.g., FT to IT) and will not be affected by transportation rates for multiple rate zones. If a shipper chooses to trade the

imbalance, i.e., purchase/sell the imbalance with another shipper, the shipper avoids cashing out with Maritimes which in turn eliminates the need for Maritimes to either purchase gas when a shipper is short or sell gas when the shipper has left gas on the system. Under Maritimes' example, the MN365 shipper (a firm shipper) is not billed any commodity rate irrespective if the shipper takes the scheduled amount or an amount greater than the scheduled amount (within tolerance) since the commodity rate under the MN365 Rate Schedule is $0.0000. Similarly, when the deliveries are made under non OBAs and at points not operated by an OBA party, the MNIT interruptible shipper should only be billed for the actual deliveries. Under Maritimes' example above, that shipper is only delivered 9,000 Dth under the MNIT Rate Schedule and therefore the only commodity charge should be assessed is for the 9,000 Dth delivered under the MNIT Rate Schedule.

2. Posted Point of Restriction

a. Background

35. Maritimes' compliance filing included a provision providing for a Posted Point of Restriction in order to prevent a customer from achieving a transportation service via a trade that it could not have nominated and scheduled on the day the restriction was in effect. Maritimes sought to limit the amount of transportation it could schedule on a given day during a month due to the restriction in order to maintain the integrity of the system. The July 3 Order found that Maritimes had not supported its proposal to limit trading through a Posted Point of Restriction. The order found that since netting and trading takes place after the date of the restriction, and can take place as late as the 17th business day of the following month, that preventing a trade across a restricted point would not alleviate the restriction nor aid in maintaining the integrity of the system. The July 3 Order directed Maritimes to remove the Posted Point of Restriction from its tariff.

b. Compliance Filing

36. Maritimes removed the tariff provisions relating to trades across Posted Points of Restriction in compliance with the July 3 Order.

c. Rehearing Request

37. Maritimes states that the July 3 Order implicitly finds that there is no physical transportation involved when there is a Posted Point of Restriction. Maritimes states that this finding is in error since transportation physically occurs at the time the Posted Point

of Restriction is in place. Maritimes states that since its operational impact area (OIA) is broadly drawn to include the entire system, it needs a mechanism to ensure that it will have flexibility to address operational issues as they arise. Maritimes argues that if the Posted Point of Restriction language is not included in the tariff, customers could circumvent Maritimes' operational restrictions after the posting of the restriction by completing via an imbalance trade after the fact what was restricted through the nomination/scheduling process. Maritimes states that limitations on imbalance trades at Posted Points of Restriction will be necessary at those times in which Maritimes would otherwise restrict scheduled quantities in those areas.

38. Maritimes provides the following explanation to support retaining a Posted Point of Restriction provision in its tariff. According to Maritimes, physical transportation occurs on Maritimes' system anytime there is a trade between shippers where a "due shipper" imbalance is upstream a "due pipe" imbalance. Maritimes argues that if a customer wanted to circumvent an operational restriction, the customer would simply go "due shipper" on the upstream side of the restriction and get another customer to go "due pipe" on the downstream side during the time the restriction is in place. Maritimes states that physical transportation has now occurred while the Posted Point of Restriction is in place. Maritimes states that, after the Posted Point of Restriction is lifted, the two customers can effect the trade to account for the physical transportation that took place during the time of the restriction, and that the customer has utilized trading to evade the Posted Point of Restriction. According to Maritimes, its proposal is not a total ban on trading on the day or days the Posted Point of Restriction is in effect. Rather, trading may still occur on each side of the restriction while the restriction is in place.

39. Maritimes further contends that if limitations are not established for trades across the Posted Point of Restriction, Maritimes would have no meaningful way to enforce its customers' recognition and accommodation of the operationally necessary restriction. Maritimes states that netting and trading could be used to game the system which could result in additional operational difficulties.

d. Commission Decision

40. The Commission grants Maritimes' request in part to permit it to retain a Posted Point of Restriction limitation on trading with respect to OBAs, but not with respect to shipper traders. This is consistent with Commission action in other proceedings where the Commission has recognized that trading OBA imbalances raises different issues than trading of shipper imbalances and has allowed pipelines to impose limitations on OBA

trading.[23] Under Maritimes' tariff, as in East Tennessee, OBA imbalances are essentially scheduling imbalances, and Maritimes has no scheduling penalties or other provisions to discourage and/or penalize scheduling misconduct by OBA operators. Accordingly, Maritimes' compliance filing to this order may include revised tariff language permitting a restriction on trading OBA imbalances that occur when there is a Posted Point of Restriction for OBA transactions.

41. However, the Commission rejects the Posted Point of Restriction proposed with respect to shippers that transport under non OBA agreements. In contrast to OBA transactions, Maritimes' firm rate schedules[24] provide for a scheduling penalty equal to 100 percent load factor usage charge for volumes that are delivered above and below tolerances for scheduled deliveries. Thus, Maritimes has a mechanism in place to discourage conduct potentially harmful to its system operations. Further, under its own example, Maritimes shows that the system could not have been operationally harmed because a transportation of the imbalance volumes occurred across the point of restriction. To justify a restriction on trading imbalances, Maritimes would have to show that the downstream shipper obtained additional imbalance volumes that physically could not have been transported from the upstream shipper's receipt point due to the posted point of restriction on the system that day and the imbalance caused operational problems on the system that day.[25] As the Commission found in the July 3 Order, preventing a trade from occurring after the day of the restriction, or subsequently permitting a trade to occur across the point of restriction if it is in the opposite direction of the system imbalance, will not alleviate the restriction nor aid in maintaining the integrity of the system. This is so because the trade will take place after the creation of the imbalance and the trade represents a financial transaction, not a physical transportation. The physical transportation has already taken place for a shipper that takes deliveries in excess of receipts downstream of the Posted Point of Restriction. If that shipper subsequently decides to trade with a shipper upstream of the point of restriction, there is no additional physical transportation resulting from the trade itself, as the transportation of the imbalance volumes traded from one shipper to the other has already occurred. Therefore, there is no reason to restrict a trade

[23] See East Tennessee Natural Gas Company, Docket No. RP00-469-000, 103 FERC ¶ 61,237(2003) (East Tennessee); Transcontinental Gas Pipe Line Corporation, 96 FERC ¶ 61,352, at 62,332 (2001); 98 FERC ¶ 61,365, at 62,575-76 (2002).

[24] See Section 3 of Rate Schedules MN365, MN151, MN90, MNOP and MNIT.

[25] Maritimes has only one OIA and has not claimed that its restriction on trading across a point of restriction is justified on the theory that its system effectively has two OIAs during such periods, in contrast to the pipeline's claim East Tennessee, supra n. 23.

of historical imbalances that occurred on a day when there was a Posted Point of Restriction in effect, since the trade would not cause an operational problem.

E. Curtailment Priority

1. Background

42. The July 3 Order rejected Maritimes' proposed revision of Section 8.2 of its GT&C to curtail service in reverse order of its scheduling priorities.[26] Under Maritimes' proposal, firm service with points wholly within a shipper's contract path would be curtailed after firm service which had one or more points outside the contract path. The July 3 Order found that Maritimes' proposal was inconsistent with Commission policy that curtailment of firm service be on a pro rata basis, and that Order No. 637 required no changes in the pipeline's tariff provisions concerning curtailment.

2. Compliance Filing

43. Maritimes revised Section 8.2(b) of the GT&C to provide that curtailment of scheduled firm service will be pro rata on the basis of MDTQ.

3. Request for Rehearing

44. Maritimes seeks clarification that the policy to which the Commission refers does not require that Maritimes accord the same priority, for curtailment purposes, to secondary firm service within-the-path as it does to secondary firm service outside-the-path. Maritimes maintains that its proposed revisions to Section 8.2 are consistent with the Commission's Order Nos. 637, *et seq.*, i.e., to give firm, within-the-path service higher priority than firm, outside-the-path service. Maritimes asserts that the Commission found that differentiating between with-the-path service and outside-the-path service for priority purposes improves competition and ensures that capacity remains with the customer placing the highest value on that capacity. Maritimes asserts that its proposed revisions to the curtailment section are consistent with the Commission's Order No. 637 directives and preserve the rights of firm shippers to the actual capacity for which they have subscribed. Further, argues Maritimes, it would be arbitrary and poor policy to prioritize within-the-path service above outside-the-path service for scheduling purposes, but equalize the two services for curtailment purposes. Maritimes states that to the extent the Commission declines to provide the requested clarification, it requests rehearing on this issue.

4. Commission Decision

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[26] 100 FERC at 61,085 P. 24.

45. The Commission declines to grant the requested clarification and denies Maritimes' request for rehearing. The Commission's finding in the July 3 Order is fully consistent with Order No. 636-B, which holds for the proposition that once scheduled, secondary firm service can not be bumped by primary firm.[27] The Commission sees no inconsistency with the holding that once secondary firm capacity is scheduled that primary firm capacity should not have a higher priority for purposes of curtailment. The firm shipper with secondary points pay the same firm reservation rates as a shipper with scheduled primary capacity, and will rely on the scheduled firm service to meet its market deliveries.

F. Miscellaneous Compliance Obligations

46. Maritimes' submitted the tariff sheets listed in Appendix A on August 2, 2002. The Commission has issued orders subsequent to the August 2, 2002 compliance filing which impact Maritimes' proposed tariff sheets. For example, in Docket No. RP03-6-000 Maritimes revised the Index Price for imbalance resolutions.[28] Similarly, Maritimes' Order No. 587-O compliance filing contained tariff changes that impact the tariff sheets listed in Appendix A. Therefore, Maritimes is directed to make conforming changes to the tariff sheets to be filed in compliance with this order to incorporate the tariff revisions previously accepted by Commission orders. In addition, Maritimes' compliance filing to this order must also incorporate the tariff changes set forth in Appendix B to this order, or explain why the tariff changes are not required.

II. Compliance With Remand Order

A. The Requirements of the Remand Order

47. On October 31, 2002, the Commission issued the Remand Order, supra n. 3. Ordering Paragraph B of the Remand Order required the following: "pipelines that the Commission has found must permit segmentation on their systems must file [by December 2, 2002] revised tariff sheets to expressly permit segmented transactions consisting of forwardhauls up to contract demand and backhauls up to contract demand to the same point at the same time."

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[27] Order No. 636-B, 61 FERC ¶ 61,272 at p. 62,013 (1992). See also, Northwest Pipeline Corporation, 63 FERC ¶ 61,124 at pp. 61,812-13 (1993); Williston Basin Interstate Pipeline Co., 62 FERC ¶ 61,144 at 62,052 (1993) and Algonquin Gas Transmission Co., 62 FERC ¶ 61,132 at 61,896 (1993).

[28] See Sheet No. 265. Also, Maritimes' new MNPAL service references an Index Price which differs from the revised Index Price.

B. Maritimes' Compliance Filing

48. On December 2, 2002, in Docket No. RP03-174-000, Maritimes filed revised tariff sheets[29] in compliance with Ordering Paragraph B of the Commission's October 31, 2002 Order on Remand. Maritimes revised tariff sheets provide that a shipper may segment its capacity by simultaneously transporting its full contract demand in a forwardhaul and its full contract demand in a backhaul to the same point. Maritimes requests that the tariff provisions contained herein, become effective no earlier than July 1, 2003.[30] In addition, Maritimes also requests waiver of the Commission's regulations in order to permit the sheets to be made effective no earlier than July 1, 2003.

C. Public Notice and Protest

49. Docket No. RP03-174-000 was noticed on December 6, 2002 with comments or protests due on or before December 13, 2002. Calpine filed a protest out of time. Calpine protests Maritimes' inclusion of the LUQ mechanism as a method of limiting segmentation outside a shipper's capacity path for the same reason it protested Maritimes' August 2, 2002 compliance filing. Maritimes filed an answer to Calpine's protest asserting that the LUQ mechanism is at issue in the Order No. 637 proceeding and therefore the Order No. 637 proceeding is the proper venue for Calpine's objections.
As discussed above, the Commission has rejected Maritimes' LUQ mechanism and rejects it in this filing as well.

50. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

D. Commission Decision

51. The Commission will accept Maritimes revised tariff sheets which allow forwardhauls and backhauls to the same point, subject to Maritimes filing a compliance filing containing the modifications discussed below, within 15 days of the date of this order. The revised tariff sheets listed in Appendix A are accepted to become effective July 1, 2003, as proposed by Maritimes.

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[29] See Appendix A for the list of tariff sheets.

[30] On December 2, 2002 Maritimes notified the Commission that the computer software modifications necessary to implement Order No. 637 would not be ready until July 1, 2003.

52. In the compliance filing Maritimes has revised Section 6.7 of its GT&C. While the first part of proposed 6.7 of Maritimes' GT&C appears to take away the right to do a forwardhaul-backhaul to the same point, proposed Section 6.7 later provides that right. The first sentence of the first paragraph of proposed Section 6.7 states that "Pipeline shall not have the obligation to schedule Customer's firm capacity in segments if, in Pipeline's discretion, scheduling such segments...(c) will result in the combined nominations of Customer and any Replacement or Prearranged Customer who has obtained all or a portion of Customer's original capacity through capacity release to exceed Customer's original MDTQ on any segment of capacity or at any point on Pipeline's system." (emphasis added). The underlined phrase, or at any point on Pipeline's system appears to take away the right to do a forwardhaul-backhaul to the same point. However, the second paragraph of proposed Section 6.7 then provides that right. The first sentence of the second paragraph of proposed Section 6.7 provides that: "For the purpose of determining whether any overlapping nominations in a segment exceed, in the aggregate (based on all relevant Customer utilization) the contract entitlements of the original firm contract in any segment or at any point (including without limitation, the MDTQ or segment entitlements), a [forwardhaul backhaul] transaction ... shall not be deemed to be an overlap at that Point of Delivery." (emphasis added) Thus, Maritimes' tariff allows a shipper to segment its capacity utilizing multiple receipt and delivery points and does not restrict shippers from making simultaneous forwardhaul and backhaul deliveries to points within its transportation path.[31]

53. Nonetheless, the prohibition against exceeding contract entitlements "at any point" in the first sentence of proposed paragraph one in Section 6.7 of Maritimes' GT&C could mislead shippers as to their rights to conduct forwardhauls and backhauls to the same point. The Commission can discern no reason for Maritimes to provide in Section 6.7 of its GT&C that shippers cannot exceed the aggregate at any point, and, therefore, the Commission will require Maritimes to remove this language from GT&C Section 6.7.

The Commission orders:

(A) Maritimes' proposed tariff sheets listed in Appendix A are accepted effective July 1, 2003.

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[31] The third paragraph of proposed Section 6.7 of Maritimes' GT&C further provides that a shipper is permitted, to receive or deliver gas outside its primary capacity path, but the transaction will be assigned a lower priority than transactions within the shipper's primary path.

(B) Maritimes is directed to file within 15 days of this order, revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.
(SEAL)

Magalie R. Salas,
Secretary.

Appendix A

Maritimes & Northeast Pipeline, L.L.C.
FERC Gas Tariff
First Revised Volume No. 1

Tariff Sheets Filed in Docket No. RP00-474-001, et al.:

First Revised Sheet No. 2
First Revised Sheet No. 4
Second Revised Sheet No. 6
Original Sheet No. 10
First Revised Sheet No. 100
First Revised Sheet No. 103
First Revised Sheet No. 104
First Revised Sheet No. 109
First Revised Sheet No. 110
First Revised Sheet No. 115
First Revised Sheet No. 116
First Revised Sheet No. 121
First Revised Sheet No. 122
First Revised Sheet No. 123
First Revised Sheet No. 124
First Revised Sheet No. 128
First Revised Sheet No. 129
First Revised Sheet No. 134
Original Sheet No. 136
Original Sheet No. 137
Original Sheet No. 138
Original Sheet No. 139
Original Sheet No. 140
Original Sheet No. 141
Original Sheet No. 142
Original Sheet No. 143
Original Sheet No. 144
Original Sheet No. 145
Sheet Nos. 146 - 199
Second Revised Sheet No. 201
First Revised Sheet No. 210A
First Revised Sheet No. 212
First Revised Sheet No. 213
First Revised Sheet No. 219
First Revised Sheet No. 235
First Revised Sheet No. 236
First Revised Sheet No. 238
First Revised Sheet No. 239
First Revised Sheet No. 240
First Revised Sheet No. 241
Second Revised Sheet No. 257
First Revised Sheet No. 260
First Revised Sheet No. 260A
First Revised Sheet No. 262A
Second Revised Sheet No. 263
Second Revised Sheet No. 265
Second Revised Sheet No. 295
First Revised Sheet No. 305
Original Sheet No. 305A
First Revised Sheet No. 400
Original Sheet No. 495
Original Sheet No. 496
Original Sheet No. 497
Original Sheet No. 498
Original Sheet No. 499
Sheet Nos. 500 - 600

Tariff Sheets Filed in Docket No. RP03-174-000:

Second Revised Sheet Nos. 210A, 235, and 236
Original Sheet Nos. 236A and 236B

Appendix B

Maritimes & Northeast Pipeline, L.L.C.
Additional Compliance Requirements

1. First Revised Sheet No. 121: In Section 3.2(B)(1) and (2), delete references to Sheet No. 10. Add references to Sheet No. 9 if applicable.

2. First Revised Sheet No. 128: Consistent with Section 3(A)(2) and 3(A)(3), revise "Sheet Nos. 7 and 8" in Section 3(A)(1) to read "Sheet Nos. 7, 8, and 9".

3. Original Sheet No. 141: In Section 8.4 references to Sections 10.3 and 10.4 should be deleted since these provisions were eliminated. Correct references appear to be Sections 8.5 and 8.6.

4. Original Sheet No. 142: In Section 8.5 references to Sections "8.2 and/or 8.5(a)" should be corrected to reflect Sections "8.3 and/or 8.5(a)". Consistent with the requirement in No. 5 below, the High Common Price in Section 8.5 requires revision.

5. Original Sheet No. 143: In Section 8.6 Maritimes incorporated revised language providing for loaned quantities to be purchased at a price equal to 150% of the average of the Gas Daily postings for the High Common Price for Dracut (into TN) posting for the seven-day period.... The use of an average of the High Common Price was rejected in Texas Eastern (102 FERC ¶ 61,198 PP132-135 (2003)). The price should be based on 150 percent of the average weekly price. The last paragraph of Section 8.6 includes references to Sections 8.2 and/or 8.6(a), the correct reference should be Sections 8.3 and/or 8.6(a). Additionally, the words "must be" should be inserted so that the language reads "...that deliveries of Customer's loaned quantities must be suspended or reduced..."

6. First Revised Sheet No. 210A: Section 1.49, the definition of Imbalance Management Services options should include park and loan service as reflected in Maritimes' original Order No. 637 filing.

7. First Revised Sheet No. 260A: The word "fee" in Section 10.6 should be changed to "penalty".